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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 4th June 2009

No. 4980—li/1(BH)-6/2006(Pt)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th March 2009 in Industrial Dispute Case No. 20 /2007 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s. A. P. Construction, Contractor, N.T.P.C./TSTPP, Kaniha and their workman Shri Narendra Jena, At Narilo, Post Chakroda, District Kendrapara was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 20 OF 2007

Dated the 27th March 2009

Present:

Smt. Suchismita Misra, LL.M.,
Presiding Officer, Labour Court, Sambalpur.

Between:

The Management of .. First Party—Management
M/s. A. P. Construction, Contractor,
N.T.P.C./TSTPP, Kaniha.

And

Their workman Shri Narendra Jena, .. Second Party—Workman
At Narilo, P. O. Chakroda,
Dist. Kendrapara.

Appearances :

For the First Party—Management .. Shri S. K. Pattanaik, Manager

For the Second Party—Workman .. Self

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of power conferred upon them by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short "the Act") have referred the following disputes for adjudication by this Court vide their Order No. 7607—li/1 (BH)-6/2006-L.C., dated the 11th June 2007.

"Whether the demand of Mr. Narendra Jena regarding his employment under M/s. A. P. Construction for the period from October 2001 to the 16th July 2006 and payment of retrenchment benefit, etc. accordingly is legal and/or justified ? If so, what are the benefits Mr. Jena is entitled to ?"

2. Shorn of unnecessary details, the facts leading to the present dispute between the first party, namely the management of M/s. A. P. Construction on the one hand and the workman, Narendra Jena on the other are stated below :

The claim of the second party workman as would appear from the statement of claim filed by him in the present proceeding runs as below :

The first party Management M/s. A. P. Construction functions under M/s. Thermal Power Station Limited, Talcher. The second party workman was employed/engaged by the first-party management from October 2001. Thus the second party workman had worked under the first party management since October 2001, to the 15th July 2006 continuously without any interruption in his service during the aforesaid period being paid his wages by the first party management on monthly basis. Then the first party management all of a sudden refused to engage the second party workman with effect from the 16th July 2006 without assigning any reason for the same though the second party workman had discharged his duties till the date of his disengagement to the satisfaction of his employer. Under such circumstances the second party workman claimed that the order of termination of his employment with effect from the 16th July 2006 be held illegal and unjustified and he be reinstated in service from which he was terminated with full back wages and regular service benefits.

3. The first party management in their written statement contested the pleas advanced by the second party workman on the following grounds :—

(a) The second party workman Narendra Jena was working under the first party management only from the 1st June 2006 to the 16th July 2006 and not from the October 2001 to the 16th July 2006 as he claims. Therefore, payment of the retrenchment benefit to him is not legally tenable under law. The second party workman is entitled to get such retrenchment benefit only for the period of his service i.e. from the 1st June 2006 to the 16th July 2006.

(b) The second party workman had worked under the first party management from the 1st June 2006 to the 16th July 2006 on daily wages basis and he had never served under them continuously without any interruption till his retrenchment. In that event also he is not entitled to get any retrenchment benefit from the first party management.

(c) The work, conduct and behaviour of the second party workman were never satisfactory and particularly his behaviour was very rough, worst and intolerable.

(d) The workman was given a gate pass during the month of October 2001, but that cannot be treated as evidence to conclude that the second party workman had worked under the first party management from October 2001, to the 16th July 2006. Further the wage slip of employment card of the second party workman or register of wages maintained by them can very well prove if the workman had worked for the period as claimed by him or he was employed under them for a very small period commencing from the 1st June 2006 to the 16th July 2006.

(e) It is alleged by the first party Management that the second party workman had misbehaved and quarreled with the site supervisor and site in-charge of the first party Management and thereafter voluntarily abandoned his service and did not come back to work. He also did not intimate the first party management about his intention of not to work with them further. He rather illegally claimed retrenchment benefit for the period from October 2001, to the 16th July 2006 which the first party management did not accept in course of conciliation held by the conciliation Officer-cum-District Labour Officer, Talcher.

Having taken the above mentioned pleas the first party management also contended that they were always ready to employ the second party workman but he did not accept.

4. The second party workman filed a rejoinder to the written statement of the first party management denying the pleas advanced by the first party management.

5. On the above pleadings only two issues were framed in this proceeding and those are—

- “(i) Whether the demand of Mr. Narendra Jena regarding his employment under M/s. A. P. Construction for the period from October 2001 to the 16th July 2006 and payment of retrenchment benefit etc. accordingly is legal and/or justified.
- “(ii) If so, what are the benefits Mr. Jena is entitled to ?”

6. In this proceeding the workman submitted his evidence on affidavit on the 4th February 2009 which was received as his examination-in-chief and he was cross-examined on behalf of the first party management. Similarly on behalf of the first party management one Soubhagya Kumar Pattanaik, Manager, Administration in the establishment of the first party management namely M/s. A. P. Construction submitted his evidence i.e. examination-in-chief on affidavit on the 24th February 2009 but he could not be cross-examined as the workman did not appear before the Court despite having the knowledge of posting of the case for hearing on these days. As revealed from the record the workman did not appear before the Court on the dates the case was posted for taking evidence from his side and them from the side of the management after his examination in this case.

7. So far the question as to whether the second party workman had worked under the first party management from October 2001, to the 16th July 2006 as he claims or only for the period commencing from the 1st June 2006 to the 16th July 2006 as pleaded by the first party management is concerned I feel it would be appropriate to examine the evidence of the workman in this regard first. The workman in his evidence before the Court stated that he was engaged as a workman in M/s. A. P. Construction on monthly wages basis with effect from 1st October 2001 and continuously served there till the 16th July 2006 with all sincerity and quite efficiently to the satisfaction of his employer (first party management). The workman alleged that the first party management had terminated his services whimsically in a preplanned manner

with some ulterior motive without following the principles of natural justice and as such his action was absolutely *mala fide*. The workman also alleged that while terminating his services the first party management had neither served him one month notice or paid him retrenchment benefits as prescribed in the Industrial Disputes Act 1947. After his aforesaid illegal termination he remained unemployed as he could not get any other job despite his best efforts. Thus he claimed for his reinstatement in service with back wages and cost. He also stated that a sum of Rs. 3650 is still due to him from the first party management as his unpaid salary/wages. He categorically admitted during his cross-examination that he had not received any appointment letter relating to his employment under the first party management when he joined there as a workman. He also admitted that he was engaged as a daily rated labourer by the first party management but he was paid wages on monthly basis. He was engaged by the first party management from the year 2001 and was asked to work in the National Thermal Power Corporation Limited at Kaniha in the district of Angul. He also stated that he could file the xerox copy of the gate pass which was issued to him in the year 2002 by the authority of the NTPC Company since the original gate pass was taken back by his employer. Except adducing his oral evidence as stated above on affidavit, the workman had neither filed a single scrap of paper to prove his engagement by the first party management from October, 2001 nor called upon his employer to file the muster roll, wage register etc, by seeking the assistance of Court to substantiate his claim about the period of his employment which was vehemently challenged by the first party management who counters the claim of the second party workman by submitting that the second party had worked under them only from the 1st June 2006 to the 16th July 2006 and not from October 2001.

During his cross-examination the workman also stated that he would definitely join his duty if the first party management would employ him again in the job which he was doing prior to the 16th July 2006 but at the same time he would definitely expect that the first party management would compensate him for the loss of his job during the intervening period. Further he is ready and willing to work under the first party management again at any time when they will provide him a job.

8. The witness examined on behalf of the first party management mentioned in his evidence that the second party workman was working under the first party management for about one and half months only i.e. from the 1st June 2006 to the 16th July 2006 on daily wages basis at the construction work site. His such evidence has not been challenged by the workman in any manner. The evidence of the first party management also indicates that the conduct and behaviour of the second party workman was very rough and in course of his employment the second party workman had left the worksite on the 16th July 2006 after misbehaving and quarrelling the site Supervisor and site In-charge of the first party management and then never returned to resume his work. The first party management also admitted through their evidence that the second party workman had not received his unpaid wages for the period of his work though the said amount i.e. Rs. 3650 was offered to him by the first party management. Further, the first party management also expressed their ever willingness to employ the second party by tendering their evidence to the effect that they are always ready to engage the workman whereas the second party workman does not intend to work. In the aforesaid circumstances the first party management submitted that they are not liable to pay any amount to the second party workman towards retrenchment benefits as demanded by the second party workman.

9. With such evidence on record it is to be seen whether the workman's demand regarding his employment under the first party management for the period from October 2001 to the 16th July 2006 is legal and justified. As described in the foregoing paragraphs one can gather very well that the second party workman had utterly failed to prove his employment/engagement under the first party management from October 2001. Rather the unchallenged testimony of the witness examined on behalf of the Management indicates that he had served under the first party management from the 1st June 2006 to the 16th July 2006 only and further his employment or engagement was as a daily rated worker under the first party management. Therefore, it has to be held that he is not entitled to get the benefits as provided U/s. 25-F of the Industrial Disputes Act. In the circumstances his demand for reinstatement in the service with back wages is neither legal nor justified.

10. However, as the first party management have expressed their willingness to engage/ employ the second party workman if he intends to work under them and the second party workman also expressed his readiness and willingness to serve under the first party Management at any time if the first party management would provide him the job, it is felt that interest of justice would serve its best if the first party management would hand over the unpaid wages of the workman i.e. a sum of Rs. 3650 to him at the earliest and would engage him a fresh maintaining the continuity in his service notionally without any back wages.

The reference is answered accordingly.

Dictated and corrected by me.

SMT. SUCHISMITA MISRA
27-3-2009
Presiding Officer
Labour Court, Sambalpur

SMT. SUCHISMITA MISRA
27-3-2009
Presiding Officer
Labour Court, Sambalpur

By order of the Governor
K. C. BASKE
Under-Secretary to Government